

**FORM FOR USE IN APPLICATIONS
FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254**

3:07CV26-mef

CHRISTOPHER McCULLOUGH

RECEIVED

Name

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174909

Prison Number

DEBRA P. HACKETT, CLK.
U.S. DISTRICT COURT
MIDDLE DISTRICT, ALA.

W.F. DONALDSON 100 WARREN LANE BESSIE, ALA.

ALABAMA 35023

Place of Confinement

United States District Court MIDDLE District of ALABAMA

Case No. _____
(To be supplied by Clerk of U. S. District Court)CHRISTOPHER McCULLOUGH, PETITIONER
(Full Name) (Include name under which you were convicted)DANIEL JONES - WARDEN, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF ALABAMA
_____, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgement which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

**PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN
STATE CUSTODY**

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8½ x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8½ x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies * must be mailed to the Clerk of the United States District Court whose address is:

P.O. Box 711
Montgomery, Alabama 36101

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

***If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.**

PETITION

1. Name and location of court which entered the judgment of conviction under attack CHAMBERS County Court LAFAYETTE ALABAMA 36862
2. Date of judgment of conviction NOVEMBER 7, 2002
3. Length of sentence 15 years / 10 years Sentencing Judge TOM YOUNG

4. Nature of offense or offenses for which you were convicted: Burglary 1st
THEFT OF PROPERTY 2nd

5. What was your plea? (check one)

- (a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

6. Kind of trial: (Check one)

- (a) Jury ☒
 (b) Judge only ☐

7. Did you testify at the trial? Yes ☒ No ☐

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court ALABAMA COURT OF CRIMINAL APPEALS
 (b) Result AFFIRMED
 (c) Date of result SEPTEMBER 19, 2003

If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: WRIT DENIED DECEMBER 12, 2003

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of court CHAMBERS COUNTY CIRCUIT COURT
 (2) Nature of proceeding POST-CONVICTION RULE 32

(3) Grounds raised CONSTITUTION REQUIRES A NEW TRIAL, PROSECUTOR FAILED TO DISCLOSE EVIDENCE IN THE DEFENDANT'S FAVOR, DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

(5) Result PETITION DISMISSED/DENIED

(6) Date of result SEPTEMBER 26, 2005

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()

(5) Result _____

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()

(5) Result _____

(6) Date of result _____

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes () No ()

(2) Second petition, etc. Yes () No ()

(3) Third petition, etc. Yes () No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: I JUST RECEIVED

INFORMATION FROM THE CIRCUIT CLERK CHARLES
W. STORY ON DECEMBER 1, 2006 THAT THIS PETITION
WAS DENIED ON SEPTEMBER 26, 2005 ON WHICH TIME
OF APPEAL TO THE COURT OF CRIMINAL APPEALS AND
THE ALABAMA SUPREME COURT HAS LAPSED.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one: (C) CONVICTION OBTAINED BY USE OF EVIDENCE GAINED PURSUANT TO AN UNLAWFUL SEARCH AND SEIZURE

Supporting FACTS (tell your story briefly without citing cases or law):

THE DAY OF ARREST MARCH 19, 2002 THE LAWST POLICE OFFICIALS SEARCHED MY 1998 MUSTANG ON THE GROUNDS OF FALSE ALLEGATIONS STATING THAT THE HIKED HELP SAW THE CO-DEFENDANT LOOKING IN A WINDOW WITH A GUN IN HIS HAND. THIS LED TO THE SEARCH OF MY VEHICLE ON WHICH THE CO-DEFENDANT WILLINGLY TOLD POLICES THAT HE HAD WEAPONS HID IN MY 1998 MUSTANG. ON WHICH THEY RETRIEVED THIS DAY WITHOUT ACQUIRING AN SEARCH WARRANT TO SEARCH MY MUSTANG. AT JURY TRIAL ALL 3 WITNESSES TESTIFIED UP UNDER OATH THAT NEITHER OF THEM SAID ANY THING ABOUT ANYONE IN THE POSSESSION OF A GUN THIS DAY.

- B. Ground two: (F) CONVICTION OBTAINED BY THE UNCONSTITUTIONAL FAILURE TO DISCLOSE EVIDENCE IN FAVOR OF THE DEFENDANT

Supporting FACTS (tell your story briefly without citing cases or law):

THE DISTRICT ATTORNEY BILL LISEBY DID FAIL TO DISCLOSE EVIDENCE IN FAVOR OF MY DEFENSE TO WIT THAT THE CO-DEFENDANTS STATEMENT SAYS THAT I BURGLARIZED THIS RESIDENCE BARE-HANDED ON WHICH THE PROSECUTION KNEW THAT NO FINGER PRINTS WERE FOUND ANYWHERE IN THIS RESIDENCE OR THE WEAPONS THAT WERE STOLEN. THE PROSECUTION KNEW THAT THE EVIDENCE WAS IN TOTAL CONFLICT WITH THE CO-DEFENDANTS TESTIMONY AND STATEMENT. THE PROSECUTION FAILED TO DISCLOSE THAT THE STATE COULD NOT PROVE ENTRANCE OF THIS RESIDENCE BY CHRISTOPHER McCULLOUGH OR A THAT WITNESS.

- C. Ground three: (I) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL

Supporting FACTS (tell your story briefly without citing cases or law):

ON NOVEMBER 7, 2002 ATTORNEY STEVE MORRIS DID REPRESENT ME AT TRIAL AND AT THIS TRIAL THE PROSECUTION PRODUCED A VIDEO TAPE OF THE VEHICLE STOP AND THE ILLEGAL SEARCH OF MY VEHICLE ON WHICH SHOWS THE JURY OF THE GUNS FOUND BEHIND MY BACK PASSENGER SEAT WHICH SHOWS IMPROPER POSSESSION OF STOLEN GOODS ON WHICH DOES NOT MEET THE BURGLARY STATUTE OF ENTRANCE OF A RESIDENCE ON WHICH HE SHOULD HAVE DISPUTED THIS AS INSUFFICIENT EVIDENCE AND HE DID NOT DISPUTE THE CORROBORATE EVIDENCE AT THIS JURY TRIAL OR SPEAK ON THE CORROBORATE EVIDENCE AT ALL. FAILURE TO SPEAK ON THE MOST IMPORTANT ESSENTIAL OF A JURY TRIAL TO WIT CORROBORATE EVIDENCE SHOWS LACK OF REPRESENTATION.

D. Ground four: (C) CONVICTION OBTAINED BY AVOIDANCE OF THE PROTECTION AGAINST DOUBLE JEOPARDY.

Supporting FACTS (tell your story briefly without citing cases or law):

AT SENTENCEMENT JUDGE TOM YOUNG DID STATE TO THE JURY AT THIS TRIAL THAT THE JURY SHOULD FIND ME GUILTY ON BURGLARY 1ST DEGREE, OR NOT GUILTY OF RECEIVING STOLEN PROPERTY, OR NOT GUILTY OF BURGLARY 1ST AND THEN AND GUILTY OF RECEIVING STOLEN PROPERTY. THIS CONSTITUTES THAT I WENT TO JURY TRIAL TO AUTOMATICALLY BE FOUND GUILTY. THIS IS SPECIFICALLY SHOWN THROUGH JUDGE TOM YOUNG'S JURY CHARGE IT ON COURT RECORDS. THIS WAS A 3 COUNT INDICTMENT ON WHICH A PERSON ACCUSED OF TAKING STOLEN PROPERTY CANNOT ALSO BE CHARGED WITH RECEIVING THE SAME PROPERTY.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

N/A

14. Do you have any petition or appeal now pending in any court, wither state or federal, as to the judgment under attack? Yes () No (X)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing STEVE MORRIS COLDWELL BANKER BUILDING WEDGEE, ALABAMA 36278 P.O. BOX 814 596th AVENUE, SE

(b) At arraignment and plea 11

(c) At trial 11

(d) At sentencing 11

(e) On appeal RONALD SLEDGE VALLEY, ALABAMA 36854

(f) In any post-conviction proceeding CHRISTOPHER MC CULLOUGH PROSE

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes (☒) No ()

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes (☒) No ()

(a) If so, give name and location of court which imposed sentence to be served in the future: CHAMBERS COUNTY CIRCUIT COURT

(b) And give date and length of sentence to be served in the future: JANUARY 15, 2009 40 YEARS

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes (☒) No ()

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on DECEMBER 2, 2006.
(date)

Christopher C. Mc Cullough
Signature of Petitioner